

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION

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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Licenses and Licensing
Rights of

HORACE MANN INSURANCE
COMPANY, HORACE MANN
PROPERTY & CASUALTY INSURANCE
COMPANY,

Respondents.

File No: UPA 2006 -00004

ORDER TO SHOW CAUSE AND NOTICE
OF HEARING
(Ins. Code §§790.03, 790.05)

STATEMENT OF CHARGES/ACCUSATION
(Ins. Code §§790.03, 790.05)

and

NOTICE OF MONETARY PENALTY
(Ins. Code §§790.03, 790.035, 790.05)

I

ORDER TO SHOW CAUSE AND NOTICE OF HEARING

WHEREAS, the Insurance Commissioner of the State of California (the "Commissioner")
has reason to believe that Respondent Horace Mann Insurance Company ("HMIC") and
Respondent Horace Mann Property & Casualty Insurance Company ("HMPC") each engaged in
or is engaging in this State in the unfair methods of competition or unfair or deceptive acts or
practices, and other unlawful acts set forth in the Statement of Charges - Accusation set forth
herein (the "Acts"); and

1 WHEREAS, the Commissioner has reason to believe that a proceeding with respect to
2 HMIC's and HMPC's Acts is in the public interest;

3 NOW, THEREFORE, pursuant to California Insurance Code §790.05, HMIC and HMPC
4 are ordered to appear before the Commissioner on a date and time to be set by the Office of
5 Administrative Hearings located at 1515 Clay Street, Sacramento, California, Suite 206, Oakland,
6 California 94612, and show cause why, if any cause there be, the Commissioner should not issue
7 an order to HMIC and to HMPC requiring each of them to cease and desist from engaging in the
8 methods, acts, and practices set forth in Statement of Charges - Accusation set forth below and
9 imposing the penalties set forth in Insurance code §790.035 and as set forth in the Prayer herein.

10 **I**

11 **BACKGROUND**

12 A. HMIC and HMPC each holds, and at all times relevant hereto each has held, a
13 Certificate of Authority issued by the Commissioner to issue insurance policies within the fire,
14 liability, automobile, and miscellaneous classes of insurance.

15 B. Under the authority of Insurance Code §§730, 733, 736 and 790.04 and California
16 Code of Regulations, Title 10, Chapter 5, Subchapter 7.5, §2695.3(a), the Commissioner
17 conducted an examination of the claims practices and procedures of HMIC and HMPC (the
18 "Examination.") The Examination was conducted at the corporate home offices of HMIC and
19 HMPC in Springfield, Illinois and it covered the period of May 1, 2004 through April 30, 2005
20 (the "Review Period.") In the course of the Examination, the Commissioner reviewed claim files
21 that had been closed by HMIC and HMPC during that period. The Examination was made to
22 discover, in general, whether HMIC's and HMPC's claims handling practices and operating
23 procedures conform to the contractual obligations in their insurance policy forms, the Insurance
24 Code, provisions of the California Vehicle Code which pertain to obligations of insurance
25 companies, the California Code of Regulations, other insurance-related statutes, and case law.
26 The Examination included a review of the following matters:

27 (1) guidelines, procedures, training plans and forms adopted by each Respondent for use
28 in California, including any documentation maintained by each in support of positions or

1 interpretations of fair claims settlement practices;

2 (2) the application of such guidelines, procedures, and forms, by means of examination of
3 claims files and related records;

4 (3) consumer complaints received the California Department of Insurance ("CDI") in the
5 most recent year prior to the start of the examination.

6 C. In conducting the Examination, CDI examiners reviewed 287 HMIC claim files that
7 were closed by HMIC during the Review Period and reviewed 218 HMPC claim files that were
8 closed by HMPC during the Review Period. Two market conduct examination reports were
9 prepared by the Commissioner which pertained to both HMIC and HMPC (the "Examination
10 Reports"), copies of which were provided to HMIC and HMPC.

11 D. Pursuant to the authorities cited in Paragraph I(B) above, the Commissioner conducted
12 a prior examination (the "Prior Examination") of the claims practices and procedures of each of
13 HMIC and HMPC (then known as Allegiance Insurance Company.) The Prior Examination was
14 conducted at the corporate home offices of HMIC and HMPC in Springfield, Illinois in August
15 2000 and it covered the period of July 1, 1998 through June 30, 1999 (the "Prior Review Period.")
16 In the course of the Prior Examination, the Commissioner reviewed claim files that had been
17 closed by HMIC and HMPC during that period. The Prior Examination was made to discover, in
18 general, whether HMIC's and HMPC's claims handling practices and operating procedures
19 conform to the contractual obligations in their insurance policy forms and the Insurance Code.

20 E. In conducting the Prior Examination, CDI examiners reviewed 117 HMIC claim files
21 that were closed by HMIC during the Prior Review Period and reviewed 280 HMPC claim files
22 that were closed by HMPC during the Prior Review Period. A market conduct examination
23 report was prepared by the Commissioner which pertained to both HMIC and HMPC (the "Prior
24 Examination Report"), a copy of which was provided to both HMIC and HMPC.

25 F. The Prior Examination Report identified 36 violations by HMIC and 51 violations by
26 HMPC during the Prior Review Period of Insurance Code §§700 and 790.03(h) and California
27 Code of Regulations, Title 10, Chapter 5, Subchapter 7.5, Article 1, §§2695.3 through 2695.8
28 (hereafter, the "Fair Claims Settlement Practices Regulations" and as to a specific section thereof,

1 "§Reg __ "), as follows:

2 (1) in 5 instances, HMIC's claim files failed to contain all documents, notes and work
3 papers pertaining to a claim, in violation of Reg §2695.3(a);

4 (2) in 5 instances, HMIC failed to explain all insurance policy benefits to the first party
5 claimant or beneficiary, in violation of Reg §2695.4(a);

6 (3) in 2 instances, HMIC failed to attempt to settle a claim by making an offer that was
7 unreasonably low by excluding taxes on homeowner personal property claims, in violation of Reg
8 §2695.7(g);

9 (4) in 3 instances, in connection with automobile total loss claims, HMIC failed to
10 include in its settlement offer all applicable taxes, license fees and other fees incident to the
11 transfer of ownership of a comparable automobile, in violation of Reg §2695.8(b)(1);

12 (5) in 21 instances, HMIC failed to conduct business in its own name, in violation of
13 Insurance Code §880;

14 (6) in 2 instances, HMPC's claim files failed to contain all documents, notes and work
15 papers pertaining to a claim, in violation of Reg §2695.3(a);

16 (7) in 10 instances, HMPC failed to explain all insurance policy benefits to the first party
17 claimant or beneficiary, in violation of Reg §2695.4(a);

18 (8) in 2 instances, HMPC failed to accept or deny a claim within 40 calendar days of
19 receipt thereof, in violation of Reg §2695.7(b);

20 (9) in 4 instances, HMPC failed to attempt to settle a claim by making an offer that was
21 unreasonably low by excluding taxes on homeowner personal property claims, in violation of Reg
22 §2695.7(g); and

23 (10) in 33 instances, in connection with automobile total loss claims, HMPC failed to
24 include in its settlement offer all applicable taxes, license fees and other fees incident to the
25 transfer of ownership of a comparable automobile, in violation of Reg §2695.8(b)(1).

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1 III

2 **STATEMENT OF CHARGES - ACCUSATION**

3 A. Statement of General Charges - Accusation

4 1. The Examination Reports identified 83 violations by HMIC during the Review Period
5 of Insurance Code §§700 and 790.03(h) and the Fair Claims Settlement Practices Regulations.
6 The Examination Reports also identified 90 violations by HMIC during the Review Period of
7 Insurance Code §§700, 790.03(h), 790.034, 880, and 1871.3(a), Vehicle Code §11515(b), and
8 California Code of Regulations, Title 10, Chapter 5, Subchapter 4.7, §2632.13(e)(2) (hereafter,
9 "Reg §2632.13(e)(2)".)

10 2. The Examination Reports identified 66 violations by HMPC during the Review Period
11 of Insurance Code §§700 and 790.03(h) and the Fair Claims Settlement Practices Regulations.
12 The Examination Reports also identified 85 violations by HMPC during the Review Period of
13 Insurance Code §§700, 790.03(h), 790.034, 880, and 1871.3(a), and Reg §2632.13(e)(2).

14 3. The pattern and frequency of the violations by each of HMIC and HMPC as set forth in
15 the Prior Examination Report and the Examination Reports indicate that during the Review
16 Period, HMIC and HMPC each knowingly committed and performed certain acts with such
17 frequency as to indicate a general business practice of unfair claims settlement practices and other
18 general business practices in violation of California law. As specified in the Examination
19 Reports, the practices and violations include the following: (a) failing to adopt and implement
20 reasonable standards for prompt investigation and processing of claims; (b) failing to effectuate
21 prompt, fair and reasonable settlements, (c) failing to respond to claimants in a timely manner; (d)
22 failing to acknowledge receipt of a notice of claim in a timely manner; (e) failing to diligently
23 conduct a thorough claim investigation; (f) failing to begin an investigation of a claim within 15
24 days; (g) failing to accept or deny coverage in a timely manner; (h) failing to provide to insureds
25 a written basis for a claim denial; (i) failing to advise insureds when additional time would be
26 taken to review claims; (j) making unreasonably low settlement offers; (k) failing to disclose all
27 benefits and other provisions of HMIC and HMPC insurance policies, (l) failing to tender
28 payment of a claim within 30 days of acceptance thereof; (m) failing to maintain all relevant

documents in claims files; (n) failing to explain to claimants the fully itemized cost of comparable automobiles; (o) failing to include taxes and transfer fees in settlements; (p) failing to advise insureds of statutes of limitations; (q) failing to document or adequately document betterment, depreciation and salvage; (r) failing to advise claimants of the right to have a claim denial reviewed by the CDI; (s) failing to advise insureds of "at fault" determinations in connection with automobile accidents; (t) failing to obtain a claim form required by Insurance Code §1871.3(a) in connection with automobile vehicle thefts; (u) failing to notify insureds of their responsibility to comply with Vehicle Code §11515(b); (v) in connection with residential property insurance, failing to provide insureds with a copy of Insurance Code §790.03; and (w) failing to conduct business in their own names.

4. The pattern and frequency of the violations by each of HMIC and HMPC as set forth in the Prior Examination Report indicate that during the Prior Review Period, HMIC and HMPC each knowingly committed and performed certain acts with such frequency as to indicate a general business practice of unfair claims settlement practices and other general business practices in violation of California law. The existence of similar and further violations as set forth in the Examination Reports indicates that HMIC's and HMPC's general business practice of unfair claims settlement practices and other general business violations of California law have continued since the Prior Review Period and Prior Examination Report and HMIC and HMPC have taken inadequate measures to bring their claims settlement practices and general business practices into compliance with California law.

B. HMIC - Statement of Specific Charges - Accusation

The Examination Reports specified the following violations by HMIC during the Review Period:

(1) in 3 instances, HMIC's claim files failed to contain all documents, notes and work papers pertaining to a claim, in violation of Reg §2695.3(a);

(2) in 1 instance, HMIC failed to acknowledge the receipt of a notice of claim within 15 calendar days, in violation of Reg §2695.5(e)(1);

(3) in 1 instance, HMIC failed to begin an investigation of a claim within 15 calendar

1 days of receipt of a notice of claim, in violation of Reg §2695.5(e)(3);

2 (4) in 5 instances, HMIC failed to accept or deny a claim within 40 calendar days of
3 receipt thereof, in violation of Reg §2695.7(b);

4 (5) in 3 instances, HMIC failed to include a statement in its claim denial that the claimant
5 may have the claim denial reviewed by the CDI, in violation of Reg §2695.7(b)(3);

6 (6) in 2 instances HMIC failed to provide a written notice that it required additional time
7 to determine whether to accept or deny a claim, in violation of Reg §2695.7(c)(1);

8 (7) in 1 instance, HMIC failed to conduct and diligently pursue a thorough, fair and
9 objective investigation of a claim, in violation of Reg §2695.7(d);

10 (8) in 2 instances, HMIC failed to provide written notice of a statute of limitations or
11 claim limitation time period at least 60 days before the expiration thereof, in violation of Reg
12 §2695.7(f);

13 (9) in 15 instances, HMIC failed to tender payment within 30 calendar days of acceptance
14 of a claim, in violation of Reg §2695.7(h)

15 (10) in 12 instances, in connection with automobile total loss claims, HMIC failed to
16 include in its settlement offer all applicable taxes, license fees and other fees incident to the
17 transfer of ownership of a comparable automobile, in violation of Reg §2695.8(b)(1);

18 (11) in 11 instances, in connection with automobile total loss claims, HMIC failed to
19 explain in writing for the claimant the basis of the fully itemized cost of the comparable
20 automobile, in violation of Reg §2695.8(b)(4);

21 (12) in 1 instance, HMIC failed to document in writing to the claimant its basis of
22 adjustment for betterment, depreciation or salvage, in violation of Reg §2695.8(i);

23 (13) in 35 instances, HMIC failed to advise an insured that he or she had been determined
24 to be "principally at-fault" in connection with an automobile accident, in violation of Reg
25 §2632.13(e)(2);

26 (14) in 15 instances, HMIC's failure to adopt and implement reasonable standards for
27 prompt investigation and processing of claims violated Insurance Code §790.03(h)(3);

28 (15) in 11 instances, HMIC's failure to effectuate prompt, fair and equitable settlement of

1 claims in which liability had become reasonably clear violated Insurance Code §790.03(h)(5);

2 (16) in 38 instances, HMIC failed to provide an insured with a copy of Insurance Code
3 §790.03 within 15 days after receipt of a claim, in violation of Insurance Code §790.034(b)(1);

4 (17) in 14 instances, HMIC failed to conduct business in its own name, in violation of
5 Insurance Code §880;

6 (18) in 2 instances, HMIC failed to secure a claim form which complies with the
7 requirements of Insurance Code §1871.3(a); and

8 (19) in 1 instance, HMIC failed to notify the California Department of Motor Vehicles
9 that the owner of a total loss salvage vehicle had retained the vehicle and failed to notify the
10 insured or owner of his or her responsibility to comply with California Vehicle Code §11515(b),
11 in violation of Vehicle Code §11515(b).

12 C. HMPC - Statement of Specific Charges - Accusation

13 The Examination Reports specified the following violations by HMPC during the Review
14 Period:

15 (1) in 6 instances, HMPC's claim files failed to contain all documents, notes and work
16 papers pertaining to a claim, in violation of Reg §2695.3(a);

17 (2) in 3 instances, HMPC failed to respond to a communication from a claimant within 15
18 calendar days, in violation of Reg §2695.5(b);

19 (3) in 3 instances, HMIC failed to accept or deny a claim within 40 calendar days of
20 receipt thereof, in violation of Reg §2695.7(b);

21 (4) in 7 instances, HMPC failed to provide a written basis for its denial of a claim, in
22 violation of Reg §2695.7(b)(1);

23 (5) in 4 instances, HMPC failed to include a statement in its claim denial that the claimant
24 may have the claim denial reviewed by the CDI, in violation of Reg §2695.7(b)(3);

25 (6) in 4 instances HMPC failed to provide a written notice that it required additional time
26 to determine whether to accept or deny a claim, in violation of Reg §2695.7(c)(1);

27 (7) in 2 instances, HMPC failed to conduct and diligently pursue a thorough, fair and
28 objective investigation of a claim, in violation of Reg §2695.7(d);

1 (8) in 18 instances, HMPC failed to tender payment within 30 calendar days of
2 acceptance of a claim in violation of Reg §2695.7(h);

3 (9) in 6 instances, in connection with automobile total loss claims, HMPC failed to
4 include in its settlement offer all applicable taxes, license fees and other fees incident to the
5 transfer of ownership of a comparable automobile, in violation of Reg §2695.8(b)(1);

6 (10) in 5 instances, in connection with automobile total loss claims, HMPC failed to
7 explain in writing for the claimant the basis of the fully itemized cost of the comparable
8 automobile, in violation of Reg §2695.8(b)(4);

9 (11) in 40 instances, HMPC failed to advise an insured that he or she had been
10 determined to be "principally at-fault" in connection with an automobile accident, in violation of
11 Reg §2632.13(e)(2);

12 (12) in 7 instances, HMPC's failure to adopt and implement reasonable standards for
13 prompt investigation and processing of claims violated Insurance Code §790.03(h)(3);

14 (13) in 1 instance, HMPC's failure to effectuate prompt, fair and equitable settlement of
15 claims in which liability had become reasonably clear violated Insurance Code §790.03(h)(5);

16 (14) in 30 instances, HMPC failed to provide an insured with a copy of Insurance Code
17 §790.03 within 15 days after receipt of a claim, in violation of Insurance Code §790.034(b)(1);

18 (15) in 14 instances, HMPC failed to conduct business in its own name, in violation of
19 Insurance Code §880; and

20 (16) in 1 instance, HMPC failed to secure a claim form which complies with the
21 requirements of Insurance Code §1871.3(a).

22 IV

23 PRAYER

24 The Commissioner prays for the following as to each of HMIC and HMPC:

25 1. An Order to Cease and Desist from engaging in such unfair acts or practices in
26 violation of Insurance Code §§700, 790.03(h), 790.034, 880, and 1871.3(a), Vehicle Code
27 §1151(b), the Fair Claims Settlement Practices Regulations and Reg §2632.13(3)(2);

28 2. Pursuant to Insurance Code §790.035, for unfair acts or deceptive acts or practices as

1 set forth above, a penalty in an amount to be fixed by the Commissioner not to exceed \$10,000
2 for each unfair or deceptive act or practice found to be willful, and a penalty in an amount to be
3 fixed by the Commissioner not to exceed \$5,000 for each unfair or deceptive act or practice found
4 not to be willful.

5 Date: October 4, 2006

JOHN GARAMENDI
Insurance Commissioner

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8 By "/s/"

9 Harry J. LeVine
10 Senior Staff Counsel
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